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February 8, 2012

Mary Jo White, Esq.  
Debevoise & Plimpton LLP  
919 Third Avenue - 35th Floor  
New York, New York 10022

Re: U.S.A. vs. City of New York, et al.  
No.: 07-CV-2067 (NGG) (RLM)

Dear Ms. White:

I am writing to express the concern of my client, the Uniformed Firefighters Association ("UFA"), regarding upcoming FDNY Entrance Examination No. 2000.

We have now heard that candidates who have applied to take that examination have recently received notices advising when and where their tests will be administered. It appears that the administration of the tests will begin in mid-March or shortly thereafter.

The UFA has tried to be cooperative in the test preparation process. It did so with the understanding that the legitimate questions raised by the union would be timely answered by counsel for the parties or the testing experts creating the exam.

Yet, several important questions raised by the UFA regarding the preparation and administration of the examination remain unanswered while the test process moves forward.

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For example, the UFA has repeatedly asked for an explanation of the results of the sample examination that was administered to approximately 800 incumbent firefighters. We were advised that the test was part of the process establishing the content validity of the new examination. We were told that the testing experts were expecting that the ratings of the incumbents by their superiors prior to the sample test would be reflected in the test results.

In the telephone conferences we have had since the sample test was given, no one has revealed to what extent the test results reflected the pre-test ratings. We have been informed that the experts believe the "preliminary" results were "encouraging." Nevertheless, we were never given any more specific information. For example, we do not know what percentage of the answers given by the incumbents were consistent with the pre-test evaluations. Nor has it been explained how the sample test results will be used to bolster the validity of Examination No. 2000. Generalities and supposition by the experts are not a substitute for factual responses.

We also have repeatedly requested an explanation of how the test will be scored and how candidates will be selected based upon the test results. Will it be strict rank order? Will there be "banding" of scores? We believe that the City has urged that the scoring method must be established before the test results are in. Once again, the UFA's questions remain unanswered less than one month before the actual test process will begin.

These questions become even more important in view of the decision to deny repeated requests by the UFA that the physical portion of Examination No. 2000 be truly competitive. Instead, a decision has been made to use the C-PAT physical examination scored on a pass/fail basis.

The UFA believes that such use of C-PAT is a mistake and will mean that the most physically fit candidates will not be identified in the hiring process.

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You have scheduled the next meeting with the unions for March 1, 2012. It is imperative that the testing experts attend that meeting together with counsel for the parties. We also urge that the above issues be addressed in a forthright fashion at or before that meeting.

Very truly yours,

SULLIVAN PAPAIN BLOCK  
McGRATH & CANNAVO P.C.

By:   
Michael N. Block

MNB:law

cc: The Honorable Nicholas G. Garaufis  
All Counsel Via ECF

(F-068518)